

norms changed dramatically over the past decades, the programs have gone unchanged since 1971.

- Regulatory neglect has given rise to waste, fraud, and abuse. The Federal Bureau of Investigation and other federal law enforcement agencies conducted raids and pursued criminal investigations in response to the HELP Committee's investigative findings.

“Americans with disabilities deserve better,” Enzi said. “We owe it to all Americans to improve these programs.”

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### **Statement of Senator Michael B. Enzi**

**June 11, 2008**

Mr. ENZI. Mr. President, I rise today to introduce the Javits-Wagner-O'Day and Randolph-Sheppard Modernization Act of 2008. This legislation was drafted after thousands of hours were spent listening to the concerns of persons with disabilities and other affected parties.

The Randolph-Sheppard Act, enacted in 1936, gives persons who are legally blind training, support and contracting priority to fulfill certain government food service contracts.

The Wagner-O'Day Act, enacted in 1938, required the federal government to make certain commodities purchases from organizations, 75 percent of whose direct laborers were blind. In 1971, Senator Jacob Javits fought to include individuals with other severe disabilities in the law. The amended law – the Javits-Wagner-O'Day Act – now requires the federal government to purchase over 11,000 commodities from organizations, 75 percent of whose workers have a severe disability.

Javits-Wagner-O'Day and Randolph-Sheppard are the two main federal employment and training programs for persons with significant disabilities. Congress has paid them little attention, and has not revised them, since their creation.

Beginning in 2003, Randolph-Sheppard and JWOD stakeholders approached Congress to seek our attention and help. Each group complained the other was getting too big a share of lucrative military dining contracts.

In 2003 and 2004, the offices of Senators Gregg, Kennedy, Ensign and Dodd tried to informally mediate. Neither the blind vendors nor the JWOD vendors would budge. The dispute intensified in the courts and in Congress, with each side accusing the other of waste, fraud and abuse.

When I assumed the Chairmanship of the HELP Committee in 2005, I decided to honor the stakeholders' longstanding request, and investigate their claims. My staff's initial findings were troubling, so I worked with my good friend Senator Kennedy to hold a bipartisan oversight hearing.

Our hearing, in October 2005, documented several troubling facts.

First and foremost, we discovered that the programs had produced bad quantitative results for persons with disabilities. There are about 15 million unemployed persons with disabilities between the ages of 16 and 64. Javits-Wagner-O'Day and Randolph-Sheppard together had created only about 48,000 jobs. Clearly we can -- and must -- do much better.

Second, the programs had stayed the same while the law, technology, commercial customs and social norms had changed dramatically over the past decades. Since JWOD was enacted, Congress, through the Americans with Disabilities Act (ADA), Individuals with Disabilities Education Act, (IDEA) and Rehabilitation Act reauthorizations of 1992 and 1998, had mandated equal access, inclusion, choice, anti-discrimination and control by individuals with disabilities over their own lives. The Supreme Court in its Olmstead decision held that the unnecessary segregation of individuals with disabilities was an impermissible form of discrimination. Corporate good citizens such as Marriott had taken a leadership role in the community to employ persons with severe disabilities in integrated work settings. New technologies made it possible for persons who were legally blind to use the Internet. These and countless other examples highlight how Randolph-Sheppard and JWOD had become ancient statutes. The world had changed dramatically since 1971. Persons with disabilities needed and deserved better treatment than the law was providing.

Third, regulatory neglect had given rise to waste, fraud and abuse. The Randolph-Sheppard program was supposed to create good jobs and increased opportunities for the many persons who are blind. Instead, we found that 38 blind vendors were taking the lion's share of profits from huge military cafeteria contracts with an approximate total dollar value of \$1.203 billion. Just as troublesome was the fact that less than 5 percent of the employees hired to fulfill those contracts were actually blind. In addition, we found nonprofit executives were using JWOD to exploit persons with disabilities for improper financial gain. The FBI and other federal law enforcement officials raided a Texas JWOD nonprofit and discovered some shocking abuses that underscored the need for Congress to act.

In 2006, I worked with Senators Kennedy, Ensign, Dodd, Burr, Clinton, Isakson, Reed, Hatch, Harkin, Roberts, Mikulski, Coburn, Bingaman, Collins, and Obama to develop solutions to these problems. The HELP Committee staff spent thousands of hours meeting with hundreds of stakeholders, and listening to their ideas about how to fix these programs. Then we drafted this legislation.

In 2007, the momentum we had set in motion for a reauthorization bill stalled and other priorities began to take precedence. I continued to talk to and work with all of the stakeholders we could find, including those representing small business.

Recent events put these issues back on the front burner where they belong. On April 15, the Department of Defense and Department of Education Inspectors General collaborated on a report “Assessment of Contracting With Blind Vendors and Employers of Persons Who Are Blind or Have Other Severe Disabilities.” In addition, the Committee for Purchase From People Who Are Blind or Severely Disabled – the principal regulator of the JWOD program – proposed modest tweaks to its authorizing statute. I sincerely applaud the Committee for their hard work in coming up with consensus fixes, but its proposal does not go nearly far enough.

As an alternative, I have updated the bill that the bipartisan HELP Committee produced in collaboration with stakeholder groups in 2006. It fulfills the promise I made to the disability community to try to solve the problems we found. The bill vitalizes and expands both programs. It creates much more flexibility to provide real job training and real skill development so persons with disabilities can develop marketable skills and make meaningful career choices. The bill also empowers a strong regulator to police both programs and make sure workers are no longer exploited.

Finally, I have tried to stay out of the military dining facility debate for years. But it has become a significant distraction to our military. Accordingly, this bill establishes an even playing field in a way that will be clear and easy for the military to administer and participants in the process to understand.

Our main goal here is to create more and better jobs for persons with disabilities. My bill moves us in the direction Congress should take to modify these two important programs. I look forward to continued discussions with my colleagues and the stakeholders on all these issues. Mr. President, I yield the floor.

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